



Why careful investigation is vital before taking on a farm tenancy

Hugh Townsend 09 July 2018

Tenants taking on long-term farming tenancies need to take the same detailed and wide-ranging approach one does when buying a farm.

A case in which tenant farmers were awarded £1.75m should serve as a warning to both tenants and landlords more widely, writes Hugh Townsend, senior partner of Exeter-based Townsend Chartered Surveyors.

Find out what happened in this case and read advice on how to avoid similar pitfalls.

See also: [Farm tenancy documents – the essentials](#)

Crown Estate Commissioners v Wakely and Wakely – what happened



Ian and Judith Wakley © Matt Austin

In December 2016 dairy farmers Ian and Judith Wakley were awarded £1.75m for misrepresentations and multiple tenancy breaches by their landlord, the Crown Estate.

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The couple had moved from Aberdeen to take on a Somerset Crown Estate tenancy in 2007.

The farm turned out to be beset by equipment problems and other difficulties, contrary to assurances from the Crown Estate.

There were issues with the parlour, the slurry/dirty water storage and disposal, fresh water supply and distribution and ingoing silage quality.

The Wakleys suffered huge losses and were eventually unable to pay their rent, after which the Crown Estate started proceedings to recover possession of the farm.

An appeal was lodged by The Crown Estate Commissioners but was withdrawn on 18 December 2017 by way of consent of both parties.

The key areas to investigate include:

Check proof of title

The landlord's title to any property needs to be established as if buying a property.

You want to be sure the landlord you are dealing with is not representing other legal interests or is heavily mortgaged. This can be done through Land Registry and local authority searches.

Get things in writing

If a prospective tenant wants to rely on representations made by the landlord or his agent these should be recorded in writing, and ideally the landlord's agent should also confirm them in writing. If not, tenants should make their own notes and send them to the landlord.

This is more important where the lease, schedule of condition and other documents have not been completed before occupation.

A draft lease should be available from the outset and the landlord should make clear whether they are prepared to invest in buildings or equipment, and on what terms.

Establish farm condition

Ideally, the outgoing tenant will have spent their past 12 months addressing their repairing obligations, with the landlord doing the same.

If the farm is not in good order, the landlord should set out exactly what they will be responsible for putting in good order and by when, and providing proof of the condition of the “unseen” items for which the tenant will take responsibility.

Before committing to the tenancy, the incoming tenant needs to understand how the farm functions and whether the infrastructure and services provided are in the condition expected or described by the landlord.

The judgement in the Wakley case (see ‘Crown Estate Commissioners v Wakely and Wakely – what happened’, above) confirmed a “caveat emptor” or “buyer beware” can be used, where a landlord can shift responsibility to the tenant to find out the condition of the farm.

For the landlord to achieve an effective caveat emptor, it is best for this to be confirmed in writing and applied carefully throughout the process.

Common issues at or around the start of tenancies include: no appropriately certified electrical systems, asbestos survey reports, health and safety reports or risk assessments. Tenants accepting full repairing arrangements should consider commissioning their own structural survey, especially of older buildings.

Allow enough time

Tenants need enough time before the expected start date of the tenancy to view and inspect the farm several times and prepare detailed tender applications with budgets, cashflow and financial statements.

Landlords need time to inspect prospective tenants’ existing holdings and address tender conditions or queries. With 12 months’ notice usually required from an existing tenant, it is possible to sign a lease many months in advance of the new tenant moving in.

Without a signed lease the landlord can gain the “upper hand” and there is a danger of a running negotiation which puts a tenant on the back foot if they have already moved in.